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REPORT
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URANIUM REVITALIZATION AND TAILINGS RECLAMATION ACT OF 1986

SEPTEMBER 20 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1004]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1004) to authorize and direct the Secretary of Energy to establish a program to provide for reclamation and other remedial actions with respect to mill tailings at active uranium and thorium processing sites, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill as amended do pass.

I. PURPOSE OF MEASURE

The purpose of the bill, as reported by the Committee on Energy and Natural Resources, is to ensure an adequate long-term supply of domestic uranium and enrichment capacity for the Nation's nuclear power program, to re-establish a viable domestic uranium industry and a competitive domestic enrichment program, and to establish, facilitate, and expedite a comprehensive system for financing reclamation and other remedial action at active uranium and thorium processing sites. The bill would approve the Department of Energy's Utility Sevices Enrichment Contracts and thereby recognize that such contracts reflect properly the relevant criteria for providing the enrichment services. The Enrichment Program's unrecovered costs incurred by the Department of Energy in providing

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services to commercial customers are established as $350 million. The bill also provides priorities for the Department of Energy in establishing pricing for enrichment services, and requires that within one year the President shall submit to Congress a report on alternative means of managing the enrichment enterprise.

II. Summary of Major Provisions

The major provisions of the Uranium Revitalization and Reclamation Act of 1986, as reported by the Committee, are as follows:

TITLE I—URANIUM REVITALIZATION

This title directs the United States Trade Representative to seek to enter into voluntary restraint agreements with all major uranium producing countries to assure that the amount of uranium mined and milled in the United States that is loaded into domestic civilian nuclear power reactors would be at least 40 percent beginning on July 1, 1987, 45 percent beginning on January 1, 1988, and 50 percent beginning on July 1, 1988, and on a year-by-year basis thereafter through December 31, 2000. This title mandates that if voluntary restraint agreements cannot be reached, then mandatory import restrictions would be imposed on the same percentage basis. Any violations of the restrictions by the owner or licensee of a nuclear power reactor would result in a fine of $500 per kilogram of the uranium of foreign origin loaded into the reactors. This title also requires that the Federal Government purchase only domestic origin uranium in the future and, in general, that Federal stocks may not be used for commercial power production.

TITLE II—REMEDIAL ACTION PERFORMED BY THE OWNER OR LICENSEE OF ACTIVE URANIUM MILLS

This title establishes in the U.S. Treasury a Uranium Mill Tailings Fund to facilitate reclamation at the active sites. Contributions to the Fund would be made by three groups: mill owners, the Federal Government, and utilities with operating nuclear reactors. The States with mill tailings sites may participate in the Fund. This title establishes the amount of $800 million for the cleanup of an estimated 200 million tons of tailings at 26 active sites in 7 Western States. The Federal share of the Fund can only be applied to the cleanup of tailings generated under Federal contracts at commingled sites. The limit of reimbursable remedial costs is set at $4.50 per dry ton, and the site owners would be responsible for the costs beyond $4.50 per dry ton. This title also directs the Department of Energy to manage the Fund in a manner such that no deficits would occur. Finally, this title provides for an allocation of costs between the Federal Government and the owners of the sites for the stabilization of thorium mill sites. The Uranium Mill Tailings Fund will not be utilized for the reclamation of thorium sites.

TITLE III—UTILITY SERVICE CONTRACT

This title approves, with one exception, the Department of Energy's Utility Servive Contract with its utility customers. In addition, this title provides that the Congress recognizes that the contract

properly reflects the relevant criteria applicable to the terms by which the Department provides enrichment services.

TITLE IV—URANIUM ENRICHMENT

This title sets the priorities for the Department of Energy's uranium enrichment pricing policy. The first priority is to maximize the market share, and the second priority is to recover government costs. This title also declares that the prior unrecovered Government costs, which have been incurred by DOE in providing enrichment services to civilian customers prior to fiscal year 1986, shall be $350 million, of which $300 million shall be deposited in the Uranium Mill Tailings Fund, and $50 million shall be returned to the U.S. Treasury. In addition, this title also directs the Administration to submit to Congress, within one year after the enactment of this Act, a report on alternative methods of managing the uranium enrichment enterprise.

III. Background and Need

I. URANIUM INDUSTRY

Under section 161v. of the Atomic Energy Act of 1954, the Atomic Energy Commission (AEC) was given the responsibility of maintaining a "viable domestic uranium industry" through the operation of its uranium enrichment plant. In order to maintain a viable industry the AEC instituted a policy whereby no foreign uranium could be enriched by domestic utilities at U.S. enrichment facilities for their own use.

Between 1954 and 1964, the domestic uranium mining and milling industry was completely dependent on purchases by the Federal Government.

In 1964 the Congress passed the "Private Ownership of Special Nuclear Materials Act." The two principal purposes of this Act were:

1. termination of mandatory government ownership of special nuclear materials, and
2. authorization for AEC to provide uranium enrichment services to utility customers.

In 1974 the ACE determined that the uranium industry had been established to the degree such that the enrichment restriction could be removed in stages. As of 1984 there was no longer a restriction on the use of foreign uranium at U.S. enrichment facilities. However, the original directive [of section 161v.] to maintain a "viable" domestic uranium industry remained.

On January 4, 1983, in an amendment to the Nuclear Regulatory Commission Authorization bill, the Congress required the President to submit to the Congress a comprehensive review of the United States uranium mining and milling industry. That report was first transmitted to the Congress in May 1984.

In September 1985, DOE issued a determination, as required by section 170b of the Atomic Enercy Act, that the U.S. uranium mining and milling industry was not viable in calendar year 1984. The finding triggered the following Federal actions:

1. The Department of Energy (DOE) offered its customers for enriched uranium an option that, if exercised, could have the effect of increasing domestic uranium sales;

2. DOE postponed for one year a DOE plan to feed some of its own uranium stockpile into enrichment plants; and

3. DOE asked the United States Trade Representative to examine the facts and implications of uranium imports and corresponding foreign trade and policy issues with a view to determining the appropriate courses of action under U.S. trade laws.

The U.S. Trade Representative recommended in December, 1985, that no action be taken to restrict imports of uranium under existing law. The Trade Representative rejected any government-initiated proceeding under section 201 of the Trade Act of 1974, by stating that the industry's problems are not caused by imports more than any other causes. He stated further that the principal cause of the decline of the domestic uranium industry is a failure of demand resulting from delay and cancellation of nuclear reactors and is complicated by discoveries in Canada of high-quality, low-cost ores that give Canada a long-term competitive advantage over U.S. producers.

The Uranium Producers of America (UPA) disagreed strongly with the Trade Representative's conclusions. They contended that much of the Canadian price advantage derives from direct and indirect government subsidization, not from inherently superior ore quality.

The Energy Information Administration (EIA) of the Department of Energy has found that annual domestic uranium production in 1984 was the lowest since the mid-1950s, while exploration and development drilling dipped to their lowest points since the mid-1960s. The number of operating mines dropped to 50 in 1984, compared to 362 in 1979. The EIA also found employment down to 3,400 person-years in 1984 from 13,700 person-years in 1981. Net earnings for the industry were negative over the five-year period 1980–1984. By January, 1986, only 3 uranium mines were still in operation, and the industry's employment dropped to 2,000 from a level of 22,000 in 1981.

Western Nuclear, Inc., together with other uranium producers, sued DOE in December, 1984, charging that DOE does not recognize its obligation under section 161v. of the Atomic Energy Act (AEA) to keep the U.S. uranium industry viable. The District Court of Colorado issued an order in September 1985, in favor of the plaintiffs. The court declared DOE's utility service contract "null and void" because it was not submitted to Congress for review, and it ruled that DOE must limit its use of foreign uranium to 25 percent starting June 6, 1986, and continue at that level until year-end. The court also ruled that starting January 1, 1987, DOE may only enrich uranium milled and mined in the United States.

DOE requested a stay from the 10th Circuit Court of Appeals. The Court of Appeals agreed to stay the lower court's ruling and to hear the oral arguments on the appeal on September 11, 1986.

At the time of the enactment of the AEA, the United States was the only country with enrichment production facilities. Therefore, a court-ruled restriction on DOE enrichment of foreign uranium

would have ensured a viable domestic uranium industry. Today, however, it is conceivable that a ban on DOE enrichment of foreign uranium as mandated by the AEA may not achieve the result originally intended, since utilities can circumvent the restriction by seeking enrichment services overseas. This would not only destroy the DOE's enrichment business, but also would reduce the market share of domestic uranium. DOE expects to lose $450 million in business next year if the court injunction is upheld.

Between 1966 and 1983, while the import restrictions on uranium were in force, there were no protests alleging a violation of the General Agreement of Tariffs and Trade (GATT). The reason for the lack of protests presumably reflects the Article 21 exemption of fissionable material and the importance of import restrictions to vital national security interests.

A strong domestic uranium industry has long been viewed as vital to U.S. national defense and security. Dependency on other nations for strategic minerals generally, and for uranium in particular, may bring some short-term economic gain but is an unacceptable risk to the national security. In order to revitalize the domestic uranium industry, further erosion of the domestic uranium market would need to be stopped.

II. URANIUM MILL TAILINGS

Uranium mill tailings are the byproduct of the extraction of uranium from mined uranium ore. The tailings contain quantities of radioactive materials (uranium, thorium, and radon) that are considered a health and environmental risk.

The Uranium Mill Tailings Radiation Control Act (UMTRCA) was passed by Congress in 1978. This Act provided for the stabilization and reclamation of mill tailings in an environmentally sound manner. Title I of the Act dealt with "inactive" mill tailings sites, that is, those sites that are no longer in operation as of January 1978. Since virtually all of the tailings from the 22 sites under title I were produced as a result of Federal activities, UMTRCA assigned to DOE the responsibility for cleanup of these sites. Cleanup costs totalling almost $1 billion are apportioned 90:10 between the Federal Government and the state in which the sites are located.

Title II of UMTRCA deals with the co-called "Active" uranium mill tailings sites, that is, those sites in operation in January 1978. Responsibility for reclamation of the active sites was assigned to the site owners.

UMTRCA also directed the Environmental Protection Agency (EPA) to establish environmental standards for the cleanup of uranium mill tailings sites. EPA did not promulgate standards until 1983. The standards have, in DOE's opinion, added greatly to the costs of reclamation of the Title I sites. The regulations are bound to cause significant escalation in the cost of reclamation at active sites over estimates made when UMTRCA was enacted. Site owners bear the responsibility for the cost of reclamation at those sites under current law.

In 1979, in response to a request from the Committee on Energy and Natural Resources, the General Accounting Office (GAO) issued a report entitled "Cleanup of Commingled Uranium Mill

Tailings: Is Federal Assistance Necessary? (DMD79-29)," in which it recommended that Congress provide assistance to the active site owners for the reclamation of tailings generated under Federal contracts. This recommendation was based on several factors, including the Federal role as buyer of the uranium, the fact that possible hazards from tailings were not recognized, and the fact that Government procurement contracts did not require reclamation of tailings. The GAO concluded that the mill owners had acted in good faith and should not bear the subsequent costs of reclamation by themselves.

Congress expressed interest in assisting reclamation at active sites in a 1981 amendment to the DOE National Security and Military Applications of the Nuclear Energy Authorization Act (Public Law 96-540). This amendment required DOE "to develop a plan for a cooperative program to provide assistance in the stabilization and management of uranium mill tailings which have resulted from ore processing to extract uranium under contract with the United States for use primarily in defense programs, and which are now commingled with other tailings." The plan was to include "a methodology for establishing the extent of Federal assistance appropriate to meet the costs for stabilizing and managing such tailings at each such site in order to comply with a requirement of Federal law or regulations imposed after termination of such Federal contracts."

The plan mandated by Congress was submitted on June 30, 1982, in a DOE report entitled "Plan for Stabilization & Management of Commingled Uranium Mill Tailings" (DOE/DT-0011). The report recommended various cost-sharing approaches for different categories of reclamation activities. It also summarized a plan for a cooperative program for Federal assistance for the stabilization and management of defense-related mill tailings. The report did not recommend whether legislation authorizing an assistance program should be adopted, but offered DOE's full cooperation in implementing such a program.

On April 10, 1986, DOE testified to the Subcommittee on Energy Research and Development that the Federal Government contributed approximately 30% of the total tailings at several of the active sites.

In light of this history, a joint funding system is a fair and equitable approach to the essential task of mill tailings reclamation. Such a system recognizes that new reclamation requirements have been imposed long after the uranium was produced, whether for commercial reactors or defense purposes.

III. DOE'S URANIUM ENRICHMENT SERVICE CRITERIA

Under the Atomic Energy Act of 1954, DOE is responsible for producing enriched uranium for civilian and defense uses. Prior to the 1970's, the U.S. held a monopoly on providing enriched uranium. However, during the 1970's, two European consortia and the Soviet Union began supplying foreign facilities with enriched uranium. By the early 1980's, DOE became the highest priced primary supplier of enrichment services. It lost 60 percent of the foreign market, and it had begun to lose domestic market also.

Section 161 v. of the Atomic Energy Act requires DOE to establish guidelines or criteria for the Government to provide private customers with enrichment service. These criteria must be submitted to Congress for 45 days prior to the time DOE actually establishes the criteria. Section 161 v. also provides that the pricing should be non-discriminatory, and that DOE restrict the enrichment of foreign uranium for domestic use to the extent necessary to assure the maintenance of a vaiable domestic uranium industry. In 1970, the AEA was amended to provide that the pricing for enrichment service "shall be on a basis of recovery of the Government's cost over a reasonable period of time."

The first criteria were established pursuant to section 161 v. in 1966. Through the years, the AEC made several changes. In 1979, the current version was adopted, and DOE was substituted for the AEC where appropriate.

In September 1985, the U.S. District Court for the District of Colorado declared DOE'S new utilities service contract for uranium enrichment "null and void" on procedural grounds. The court found that DOE's new contract was not developed in accordance with the requirements of the Administrative Procedures Act. The court concluded that the contract amended the criteria under which the enrichment services are to be performed, and because the contract had not been submitted to Congress, it is null and void.

In response to the court's order, on January 24, 1986, DOE published in the *Federal Register* a notice of proposed rulemaking for the new criteria, which would amend 10 CFR part 762. On August 6, 1986, DOE transmitted the new criteria to the Congress for approval within 45 days. However, the Senate, on August 1, 1986, disapproved the criteria, as submitted by DOE, by adopting an amendment to a joint resolution increasing the statutory limit on the public debt (H.J. Res. 668). The principal reasons for the disapproval are the ongoing dispute over the amount of unrecovered Government costs, and the controversy over DOE's interpretation of section 161 v. of the Atomic Energy Act which provides that DOE to the extent necessary to assure the maintenance of a viable domestic uranium industry by restricting the enrichment of foreign origin uranium.

In the absence of criteria validating the existing service contract, the more costly long-term fixed commitment contract with utilities would apply. This contract requires DOE to deliver a specific amount of enrichment over a long period of time at very high prices. The result would be further erosion of DOE's share of the domestic market for enrichment services.

IV. URANIUM ENRICHMENT PRICING AND REVENUE

DOE's framework for consideration of pricing, cost allocation, and cost recovery has been based on section 161 v. of the Atomic Energy Act.

Section 161 v. provides that the pricing of the enrichment service "shall be established on a basis of recovery of the Government's costs over a reasonable period of time." However, section 161 v.

does not explicitly address how such costs are calculated, nor does it define "a reasonable period of time."

Prior to the 1970's, the U.S. held a monopoly on providing enriched uranium. By the 1980's, the DOE had not only lost 60% of the world market, but had also become the highest priced primary supplier as well. In order to compete successfully in the world and domestic markets, DOE's price of enrichment service must decline substantially. Meanwhile, the Office of Management and Budget, due to budgetary restraints, has proposed that the enrichment service should begin to repay the Treasury for past Federal investment in the program. The net effect of the repayment will be an increase of the price of enrichment services.

The estimates of the amount to be repaid to the U.S. Treasury range from $7.3 billion to zero. The GAO calculated the amount to be $7.3 billion at the end of fiscal year 1984. The DOE claimed it to be only $788 million in fiscal year 1984. This year the Department took the position that the total Federal investment is $7.3 billion, as calculated by the GAO, but that $3.9 billion should be written off for the investment on the cancelled Gas Centrifuge Enrichment Plant ($2.7 billion) and the unused portion of the Gaseous Diffusion Plant ($1.2 billion). Thus, $3.4 billion would remain as the repayment amount. The Edison Electric Institute (EEI) claims that all costs have been paid for by civilian customers in the past since the prices DOE charged were based on these costs. EEI concedes that on a cash-flow basis, the difference between appropriations and revenues, plus interest, less costs attributable to defense activities, currently totals $350 million.

The commercial customer's obligation of the DOE enrichment program's unrecovered government costs must be defined so that the enrichment program can set the price of the enrichment service in a competitive manner.

IV. Legislative History

S. 1004 was introduced on April 25, 1985, by Senator Domenici for himself and Senator Simpson, Senator Bingaman, and Senator Wallop. The bill was referred to the Committee on Energy and Natural Resources. On July 16, 1985, the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources held a joint hearing with the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs on S. 1004 and H.R. 2236, the House companion bill.

On April 8, 1986, amendment No. 1729 was introduced by Senator Domenici as a substitute to S. 1004. The Subcommittee on Energy Research and Development held a hearing on the substitute bill on April 10, 1986. Testimony was received from witnesses representing the Department of Energy and the Uranium Producers of America. Additional testimony was submitted from the General Accounting Office, Congressional Research Service, the Embassy of Australia, the American Enrichment Company, Edison Electric Institute, the National Taxpayers Union, Southwest Research and Information Center, and the State of New Mexico.

V. Committee Recommendation and Tabulation of Votes

The Committee met in open business session to consider S. 1004 on September 10 and 11, 1986. On September 11, 1986, the Committee, with a quorum present, recommended that the Senate pass S. 1004 if amended as described herein. The roll call vote on reporting the measure was 14 yeas, 3 nays, and 1 abstention as follows:

YEAS	NAYS	ABSTAIN
Mr. McClure	Mr. Evans	Mr. Melcher
Mr. Hatfield	Mr. Bradley*	
Mr. Weicker*	Mr. Rockefeller*	
Mr. Domenici		
Mr. Wallop		
Mr. Warner		
Mr. Murkowski		
Mr. Nickles		
Mr. Hecht		
Mr. Johnston*		
Mr. Bumpers		
Mr. Ford		
Mr. Metzenbaum*		
Mr. Bingaman*		

*Indicates vote by proxy.

VI. Committee Amendments

The Committee adopted an amendment in the form of a substitute for S. 1004. The amendment adds three new titles to the bill and modifies the provisions of S. 1004 dealing with reclamation of uranium mill tailings. The major changes are described in this section.

In section 1, the short title was amended to read "Uranium Revitalization and Tailings Reclamation Act of 1986".

In section 2, nine new findings were incorporated, and the purpose was revised to reflect the addition of the three new titles. In addition to establishing a funding mechanism for financing the reclamation and other remedial action at active mill tailings sites, two statements were added relating to ensuring a long-term supply of domestic uranium and enrichment capacity for the Nation's nuclear power program, and the re-establishing of a competitive domestic enrichment program.

In section 3 of S. 1004, the original text was retitled as Title II in the substitute. The definitions of the "Tailings Fund" and "Indian tribe" were deleted, and three new definitions were added as follows:

"reclamation, decommissioning and other remedial action",
"United States Usage Requirements," and
"uranium mined and milled in the United States".

Sections 4–14 of S. 1004 were deleted and were replaced by the following four titles:

TITLE I—URANIUM REVITALIZATION

Language in this new title requires the United States Trade Representative to seek negotiations to voluntarily restrain uranium imports from the major uranium producing countries. If the negotiations fail, a phase-in of import restrictions would be imposed that that would affect uranium loaded into the nuclear power reactors between July 1987, and December 2000. A fine of $500 per kilogram of uranium loaded into the nuclear power reactors not mined and milled in the United States would be levied during this embargo period on a year-by-year basis on uranium in excess of the import restriction.

The Committee agrees with the Secretary of Energy's determination that the uranium industry is not viable. The continuing long-term erosion of domestic production of uranium by foreign penetration will be detrimental to our ability to supply natural uranium for the purposes of national security, energy independence and reducing trade deficits.

The Committee believes that as an alternative to the implementation of an enrichment limit under section 161 v. of the Atomic Energy Act, a U.S. domestic uranium usage requirement through the year 2000 would provide the domestic uranium industry an opportunity to become viable. The impact of the restriction on the foreign imports is mitigated by the inclusion of a grandfather clause affecting existing uranium contracts. At present, foreign uranium accounts for 35 percent of the domestic consumption. The Energy Information Agency has estimated that without an import restriction, the imports would reach the 50 percent mark by mid-1988 and could go as high as 65 percent by 1994. The proposed import restrictions in the amendment would permit foreign producers to continue their pursuit of U.S. market share at a reasonable proportion, while allowing the domestic production capacity to be maintained.

TITLE II—REMEDIAL ACTION PERFORMED BY THE OWNER OF LICENSEE OF ACTIVE URANIUM MILLS

The new language of this title incorporates the following major modifications to the "Uranium Mill Tailings Fund" established by the S. 1004, as introduced:

1. The share of costs paid by owners or licensees was increased from 15 percent of the costs to approximately 25 percent of the costs. The owner or licensee would contribute $2 million per site in addition to $1 per dry ton for all tons of commercial tailings in existence at such active site on the date of this Act. These contributions must be deposited in the Fund on or before January 31, 1993. In case of the decommissioning of a mill, the owner or licensee would contribute an additional $500,000 to the Fund. The owner or licensee would assume any additional costs of cleanup when the remedial action costs more than $4.50 per dry ton.

2. The share of costs of the Federal Government was revised from 30 percent to approximately 37 percent of the costs. $300 million shall be deposited into the Fund from the uranium enrichment revenues in excess of program expenditures. The Fed-

eral share may be applied only to reclamation of tailings generated under Federal contracts at commingled sites.

3. The share of costs paid by utilities was reduced from 55 percent of the costs to approximately 37 percent of the costs. The calculation of the contribution was changed from 0.15 mil per kilowatt hour to $22 per kilogram of uranium contained in fuel assemblies initially loaded into each civilian power reactor during each of the calendar years 1989 through 1993.

4. A list of active sites qualified for reimbursement from the Fund was added to identify all mill locations with estimated tons of mill tailings. The tonnage must be verified by the Secretary of Energy.

5. The share of costs paid by the States with the active sites was incorporated at $0.1 per dry ton at each site. However, the contribution by the States to the Fund is optional. The Committee is aware of the benefit the States receive from the remedial action sites, but recognizes the restrained budgetary condition of the western states, where the mill tailings sites are located, resulting from severely depressed oil and gas prices and reduced production.

6. This Act establishes limits on financial obligation of utilities and the Federal Government for reclamation at uranium mill tailings sites. However, longterm obligations to the owner or licensee, with respect to the reclamation requirements under the Uranium Mill Tailings Radiation Control Act, regulations of the Nuclear Regulatory Commission, and regulations of the Environmental Protection Agency, are not affected by this Act.

The Committee reaffirms that the responsibilities for reclamation, decommissioning, and other remedial action to the active sites are those of the owners or licensees.

TITLE III—UTILITY SERVICE CONTRACT

The Committee is aware of the decision rendered by the District Court of Colorado in *Western Nuclear, Inc., et al.* v. *F. Clark Huffman, et al.*, and the Appeals Court's order granting a stay.

The language in this title approves DOE's new utility service contract and recognizes that such contract reflects all the relevant criteria, with one exception. DOE is prohibited from charging a fee for the selection of a variable tails option between 0.2 percent and 0.3 percent.

TITLE IV—URANIUM ENRICHMENT

Subsection 401(a) amends section 161v. of the Atomic Energy Act, as amended, to provide that the first priority in establishing prices for uranium enrichment services will be the acquisition and retention of market share by the Department of Energy. The Committee is aware that current prices charged by DOE are substantially above the market for such services. DOE has suffered significant erosion in its market share largely because of a rigid pricing policy that is constrained by the current section 161v.

Sales of enrichment services now take place in a competitive environment. The United States no longer has a monopoly on enrich-

ment service. Therefore new considerations over and above simple recovery of "costs" must enter into the establishment of prices if the Federal enrichment enterprise is to remain viable. DOE must become competitive, both in its pricing and in its management. The Committee intends that this amendment to section 161v. give DOE the flexibility to recover its lost market share, while placing the operation of the Federal enrichment enterprise on a competitive basis.

The amendment made by subsection 401(a) also directs DOE, as a second priority, to recover the Government's costs over a reasonable period of time. This provision mirrors the current law requirement regarding the pricing of uranium enrichment services by DOE. The Committee fully intends that DOE be mindful of the need to recover both current and prior unrecovered Government costs. Subsection 401(b) addresses prior unrecovered costs. Subsection 402(b) requires the Secretary to notify Congress promptly if revenues fail to recover current expenditures in any fiscal year and to provide Congress with alternative plans for full cost recovery. Thus, the Committee is not expressing a lack of interest in recovery of the Government's costs. Rather, the Committee is concerned that the Federal enrichment enterprise reestablish a vigorous and viable role in the enrichment market so that it will be able to recover its costs.

Subsection 401(b) fixes as of August 1, 1986, the unrecovered Government cost of providing enrichment service activities under section 161v. of the Atomic Energy Act as amended by section 401(a)

For several years the Office of Management and Budget has been urging that the Department of Energy contribute to reduction of the overall Federal deficit by returning to the Treasury from uranium enrichment revenues "unrecovered Government costs" incurred by the uranium enrichment program over the past 16 years. Congress reacted to OMB by enacting section 7502 of the Consolidated Omnibus Budget Reconciliation Act of 1985, which set voluntary targets for repayment to the U.S. Treasury by DOE for fiscal years 1986 through 1988 and directed the Secretary of Energy to determine the amount of the actual repayment "consistent with the financial integrity of the uranium enrichment service activities program during a period of not less than 10 years". Congress further required that the "amount of repayment shall not adversely affect the reliability of the supply of uranium enrichment servics at competitive prices for existing and potential customers".

The Committee shares the concern of Congress that use of the uranium enrichment program as a source of cash for deficit reduction is unwise and inconsistent with Federal policies that deserve priority over obtaining marginal contributions to deficit reduction. The most important of these policies is driven by the need to maintain a vigorous Federal presence in the uranium enrichment market because of the significance of uranium enrichment technology for the proliferation of nuclear weapons capability. A second policy requires that the Federal Government insure that a reliable supply of enriched uranium is available at reasonable prices for the nuclear reactors that currently produce 16 percent of the nation's electricity. If imposition of excessive repayment requirements jeapordizes the Federal enrichment enterprise, the Federal Govern-

ment will be unable to carry out its responsibilities under these policies.

Subsection 402(b) declares the unrecovered Government cost under section 161 v. of the Atomic Energy Act to be $350,000,000 on August 1, 1986. The Committee therefore rejects the assertions of the OMB, DOE and the General Accounting Office that the enrichment program "owes" the Treasury other larger amounts computed by summing allegedly unrecovered Government costs, Government investment, prior obligations of the Department of Energy or its predecessors, imputed interest on prior appropriations, or any combination of these or other accounting concepts. The Department is directed to adjust its books to reflect unrecovered Government cost, as the term "Government cost" is used in section 161 v., at $350,000,000 as of August 1, 1986.

This cost is to be repaid as set forth in subsection 401(c). The first $300,000,000 in excess uranium enrichment revenues generated after the enactment of this Act are to be deposited in the Uranium Mill Tailings Fund established under Title II of this Act. Any subsequent excess revenues of the enrichment program are to be deposited in the Treasury, and, when $50,000,000 in such revenues have been so deposited, any and all obligations borne by the commercial customers for Government costs incurred before August 1, 1986 in the provision of uranium enrichment services shall be fully and completely repaid.

Section 402 describes the disposition of revenues of the uranium enrichment program in excess of program expenditures. The Committee expects DOE to be able to generate such excess revenues and satisfy the requirements of section 161 v. of the Atomic Energy Act, as amended by this Act. The first $300,000,000 of these excess revenues are to be deposited in the Uranium Mill Tailings Fund, and all subsequent excess revenues will be deposited in the Treasury.

The Committee also amended the title to reflect more closely the contents of the bill.

VII. Section-by-Section Analysis

TITLE I—URANIUM REVITALIZATION

Section 111. Negotiations to Voluntarily Restrain Uranium Imports. The United States Trade Representative is directed to seek to enter into voluntary restraint agreements with all major uranium producing countries (defined as those countries capable of importing three million pounds or more of U308 in any calendar year) to assure that the amount of foreign uranium loaded into domestic civilian nuclear power reactors between July 1, 1987 and December 31, 1987 would not exceed the percentage as provided in section 112.

Section 112. United States Uranium Usage Requirement. If voluntary restraint agreements cannot be reached, then the amount of domestic uranium in fuel loaded into nuclear power reactors would have to be at least 40 percent for the period July 1, 1987 until December 31, 1987; 45 percent for the period January 1, 1988 until June 30, 1988; and 50 percent for the period July 1, 1988 until

December 31, 1988, and for any calendar year thereafter through December 31, 2000. Foreign uranium delivered to domestic utilities under contracts entered into prior to September 3, 1986 could be loaded even if the total amount of foreign uranium loaded exceeds the percentage provided in this section. However, if the domestic suppliers have not, prior to September 8, 1986, purchased or contracted to purchase uranium to fulfill such contracts, then a restriction at 50 percent domestic uranium would be applied. Furthermore, any utility exceeding for limitations must provide for the use of 100 percent domestic uranium in the remainder of its fuel requirements beyond those contracts signed prior to September 8, 1986.

Section 113. A charge of $500 per kilogram would be assessed a utility for every kilogram of foreign uranium loaded into a nuclear power reactor in a given year that exceeds the limitations as provided under section 112.

Section 114. Viability. The provisions of Sec. 161 v.(B) and section 170B. of the Atomic Energy Act requiring the Secretary to maintain a viable domestic uranium mining and milling industry would be waived through the year 2000. The waiver is appropriate because of the domestic usage requirement provisions of this Act that would restrict the usage of foreign uranium during this time period.

Section 115. Licensee Certification. Nuclear power reactor licensees would report their performance under the Uranium Usage Requirements on an annual basis.

Section 116. Government Uranium Purchases. Agencies and instrumentalities of the United States would be required to purchase only domestic origin uranium in the future. Furthermore, the use of natural and enriched uranium from U.S. Government-owned stocks and inventories would be restricted to military and Government research purposes and the efficient operation of enrichment facilities. The stock and inventory levels shall be kept constant except for military and Government research purposes. Furthermore, the Tennessee Valley Authority would be considered to be an electricity utility and would be subject to the same requirements under the Act as any other utility.

TITLE II—REMEDIAL ACTION PERFORMED BY THE OWNER OR LICENSEE OF ACTIVE URANIUM MILLS

Section 211. Uranium mill owners or licensees electing to participate in the program for remedial action established by this Act must perform the remedial action pursuant to applicable environmental standards established pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, and they are entitled to compensation from the Uranium Mill Tailings Fund for certain costs incurred. Within 180 days of the date of enactment of this Act, the Secretary shall determine the total actual dry tonnage of mill tailings at each active site and the dry tonnage of mill tailings which was processed for the Federal Government. Only the active sites listed in this Act are eligible for reimbursement for the remedial action taken.

Section 212. The Uranium Mill Tailings Fund is established as the source of reimbursements to mill owners or licensees to be made by the Secretary of Energy. The disbursements from the Fund may only be made in amounts as appropriated by Congress.

Section 213. Contributions to the Uranium Mill Tailings Fund. Contributions to the Fund would be made by the following parties in the designated amounts:

Uranium Mill Owners or Licensees—approximately 37 percent each.

Nuclear Power Reactor Licenseees—approximately 37 percent each.

Federal Government—approximately 25 percent each.

States with Active Uranium Mills—2 percent (optional).

The total of these contribution would be approximately $800 million. Fees for mill owners would be $2 million per site plus $1 per ton of commercial tailings. The Federal contributions would be $300 million, which is proportional to the relative amount of mill tailings attributable to Federal procurement. The contributions by the nuclear reactor licensees would be derived from a fee of $22 per kilogram of uranium loaded in each reactor during the years from 1989 to 1993. States may contribute $0.10 per ton of active site tailings within their borders.

Section 214. Any mill licensee electing to participate would be required to do so by January 1, 1989.

Section 215. The maximum reimbursement per site to a mill licensee cannot exceed $4.50 per ton, and the Secretary of Energy may not reimburse a licensee for any more than two thirds of the cost of reclamation. The owner or licensee of the site is obligated to pay at least one-third of the total costs of reclamation. If the Secretary determines that there are excess monies in the Fund, the Secretary must first refund those funds to the participating states, then the remaining excess to the Federal Treasury. The Federal contribution to the Fund shall only be reimbursed for the remedial actions taken for the tailings generated under contracts with Federal Government.

Section 216. Limitation of Reimbursement. No mill licensee may be reimbursed for an amount larger than $4.50 per ton of tailings. Any additional costs would be borne by the licensee.

Section 217. Tailings Generated After the Effective Date of the Act. No costs incurred for the reclamation of mill tailings generated after the effective date of this Act would be eligible for compensation under the Act.

Section 218. Thorium Sites. The Secretary of Energy is authorized to enter into cooperative agreements with licensees for such sites to provide funds for the cleanup of those portions of each site that were created as a result of Federal activities.

Section 219. The Secretary is directed to manage the Fund in such a fashion that no deficits occurs.

Section 220. Reimbursements from the Fund shall include interest from the date of a statement for reimbursement until reimbursement is made of submission.

Section 221. Limitation of Financial Obligations. The contributions made under this Title are the sole financial liability and obligation imposed under Federal law in connection with the reclama-

tion of active mill sites. This Act does not affect the long-term obligation for the care of mill sites or other remedial action required by the Uranium Mill Tailings Radiation Control Act and regulations promulgated by NRC and EPA.

Section 222. For those sites at which reclamation has already been accomplished, and whose owners elect to participate in this program, the Secretary shall determine whether such reclamation activities were necessary in order to comply with applicable environmental standards and are thus entitled to reimbursement under this Title.

Section 223. General authority for rulemakings necessary for the management of the Fund by the Secretary is provided.

Section 224. Surety requirements under the Atomic Energy Act 161x. are modified to take into account the shared responsibility for financing cleanup established under this Title.

TITLE III

Section 301. The Department of Energy's Utility Services Contract is approved, except that DOE would be prohibited from charging a fee for the selection of Variable Tails Option between the 0.2 percent and 0.3 percent range.

TITLE IV—URANIUM ENRICHMENT

Section 401. The first priority for the uranium enrichment pricing shall be to maximize the market share, and the second priority shall be the recovery of government costs. The prior unrecovered Government costs shall be defined as $350 million of which $300 million shall be deposited in the Uranium Mill Tailings Fund and $50 million shall be returned to the Treasury.

Section 402. Revenues from uranium enrichment service in excess of expenditures shall be deposited in the Treasury after the amount of $300 million has been deposited in the Uranium Mill Tailings Fund. DOE shall report to Congress on or before the first day of February of the following fiscal year on alternative plans of recovery if, in any fiscal year the revenues received are less than 95 percent of Government costs.

Section 403. Not less than one year after the enactment of this Act, the President shall submit to Congres a report on alternatives to the Federal management and operation of the uranium enrichment enterprise. Such alternatives may include the establishment of a corporate body to assume ownership of, or lease, the enrichment facilities currently owned by the Federal Government.

VIII. Cost and Budgetary Cosiderations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 19, 1986

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
358 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 1004, the Uranium Revitalization and Tailings Reclamation Act of 1986, as ordered reported by the Senate Committee on Energy and Natural Resources, September 11, 1986. The bill provides for assistance to the domestic uranium industry and cost-sharing for the cleanup of uranium wastes at active mill sites. CBO estimates that enactment of this bill will result in an increase in federal outlays of approximately $280 million over the next five years, including an increase in fiscal year 1987 outlays of about $40 million. The near-term increase in enrichment outlays would be offset by reduced outlays in the long term (after 1991), because the current financing method for the enrichment program requires that program revenues cover all costs of operation over time.

Bill Purpose

Title I directs the U.S. Trade Representative to seek voluntary restraint agreements with all major uranium producing countries to assure that not more than 50 percent of the uranium used in domestic civilian nuclear power reactors would be of foreign origin. The voluntary agreements would be sought for the period from July 1, 1987 through December 31, 2000. If such voluntary agreements cannot be obtained, the bill specifies U.S. uranium usage requirements that must be met by domestic electric utilities. The bill would require utilities to use at least 40 percent U.S. uranium from July 1, 1987 through December 31, 1987, 45 percent U.S. uranium for calendar 1988, and 50 percent U.S. uranium for each calendar year from 1989 through 2000. Utilities that do not meet these requirements would be assessed a charge of $500 for each kilogram of uranium that exceeds the usage requirements.

Title I contains a provision that waives certain requirements regarding the maintenance of a viable domestic uranium industry. This provision would allow the Department of Energy (DOE) to continue enrichment of foreign ore intended for use in the United States. DOE is currently the defendant in a lawsuit that invokes the viability requirements of existing law (Western Nuclear, et al vs. Huffman, et al; 84-C-2315). If the government loses this case, DOE anticipates a significant loss of demand for foreign ore enrichment services. Enactment of S. 1004 would avoid such a potential loss of demand by waiving certain statutory provisions involved in the lawsuit.

Title I also contains a provision that restricts DOE's use of existing uranium stocks to military or government research purposes. This provision would allow short-term use of such stocks for efficient operation of DOE enrichment facilities, but the uranium used for such purposes would have to be replaced to maintain the existing stockpile level, less any reductions for military or government research purposes. Under current law, DOE plans to use the existing uranium inventory as a feedstock in the enrichment process in order to reduce power costs.

Title II of S. 1004 establishes a uranium mill tailings fund to provide partial reimbursement to the owners or licensees of active uranium mills for the costs of remedial action associated with existing mill tailings at those sites. The fund will receive contributions from the mill licensees, nuclear power reactor licensees, and the federal government. The states in which active mill sites are located may also contribute to the fund, but such state contributions are not mandatory.

The mill tailings fund contributions from mill licensees and electric utilities will be determined by formulas set in the bill. The federal contribution is fixed as $300 million, to be derived from DOE uranium enrichment revenues. DOE is expected to set enriched uranium prices to obtain the required $300 million contribution by the early 1990s. The nonfederal contributions to the fund will take place over the 1990-1994 period. The mill tailings fund would be used to reimburse mill licensees for remedial action costs up to $4.50 per ton of mill tailings. Additional cleanup costs would be borne by the licensees.

Title II also authorizes federal expenditures for cleanup of thorium mill tailings at sites involving sales to the federal government. The authorization is limited to such sums as are necessary to pay for cleanup of tailings arising from the production of thorium for the federal government.

Title III affirms DOE's utility services contract with one exception: DOE is prohibited from charging for the selection of the variable tails assay option between the 0.2 percent and 0.3 percent range.

Title IV directs DOE to set prices for uranium enrichment services to achieve the maximum attainable share of the domestic and foreign enrichment market. The bill defines recovery of the government's costs as a second but subordinate priority. Current unrecovered government costs are defined by the bill to be $350 million. Presently, DOE estimates current unrecovered government costs to be $3.4 billion. This reflects an administrative "write-down" of the debt from a previously estimated level of $7.5 billion. S. 1004 would write down the debt further by defining unrecovered costs as $350 million. Title IV states that these costs are completely repaid when: (1) $300 million has been deposited in the mill tailings fund, and (2) $50 million has been deposited in the Treasury. This title requires DOE to submit reports to the Congress setting forth plans for full recovery of the government's costs, as defined above, and for alternative methods of managing the uranium enrichment enterprise, including options for transfering enrichment facilities and services to the private sector.

Federal Budget Impact

S. 1004 includes several provisions that, if enacted, will significantly change the government's uranium enrichment program. CBO estimates that these program changes will not result in a net change in federal costs over the long term. However, CBO estimates that enactment of the bill would result in an increase in net outlays for uranium enrichment of approximately $40 million in fiscal year 1987, and approximately $460 million over the 1987-1991 period. Because the enrichment program is currently financed so as to cover all costs of operation over time, CBO projects that the near-term increase in program outlays will be offset after 1991. The costs will be recovered through higher charges for enriched uranium.

Most of the estimated five-year increase in enrichment program outlays can be attributed to the bill's requirement that the existing government stockpile of uranium be maintained at its current level, less any reductions for military or government research purposes. Under current law, DOE plans to use the stockpile to reduce program costs. Based on information provided by DOE, CBO expects that the stockpile will remain at current levels if S. 1004 is enacted, and that DOE will therefore be required to purchase additional power for enrichment services during the 1987-1991 period.

Nonfederal contributions to the Uranium Mill Tailings Fund established by S. 1004 will begin in fiscal year 1990, and continue through fiscal year 1994. CBO estimates the 1990 and 1991 contributions to total $182 million: $52 million from uranium mill licensees, and $130 million from nuclear power reactor licensees. These nonfederal contributions represent a decrease in federal outlays over the next five years because expenditures from the fund are not expected until after 1991. Federal contributions to the mill tailings fund over the next five years do not result in outlays until expenditures are made from the fund.

CBO estimates that the bill's provision that defines current unrecovered government costs for uranium enrichment as $350 million, representing a $3 billion write-down of the estimated debt, will not have any budget impact. Although current law assumes debt repayment targets for fiscal years 1986 through 1988, no repayment is actually required, and none is estimated by CBO. There are no other repayment requirements in current law. Therefore, a redefinition of the program debt would not affect budget outlays.

CBO estimates that federal administrative costs will be increased by about $300,000 in fiscal year 1987, and by approximately $1 million over the 1987-1991 period, as a result of the bill's requirements for trade negotiations, DOE reports, and management of the mill tailings fund.

S. 1004 authorizes such sums as may be necessary for cleanup of thorium mill tailings associated with government purchasers of thorium. CBO estimates that the federal portion of thorium cleanup will cost approximately $50 million (in 1986 dollars), but that none of these costs will be incurred in the 1987-1991 period. Currently, there is no schedule for thorium cleanup. Additional administrative costs after 1991 for activities related to this bill are estimated to be about $500,000 per year.

Other provisions in the bill are expected to have no significant impact on federal outlays.

State and Local Costs

States in which active uranium mill sites are located may contribute approximately $19 million to the Uranium Mill Tailings Fund. However, such contributions are not required by the bill. The voluntary contributions would be made over the 1990-1994 period, with individual contributions based on the amount of mill tailings in each state. States that contribute to the fund are entitled to reimburrement, up to the amount of their contributions, if the fund contains excess amounts after all cleanup is completed. The states listed in the bill as containing active mill sites are: Colorado, New Mexico, Texas, Utah, Washington, Wyoming, and South Dakota.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Edward Bartlett

for Rudolph G. Penner
Director

cc: Honorable J. Bennett Johnston, Jr.
Ranking Minority Member

IX. Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaulation of the regulatory impact which would be incurred in carrying out S. 1004 as reported.

Titles I and II of the bill would affect the domestic uranium industry and nuclear utilities. During the time of uranium import restiction, there will be over 100 nuclear power reactors operating which would supply electricity in 35 states.

Title II of the bill would in no way affect the regulatory authorities of NRC, EPA, and States. The direct impact is to facilitate the cleanup actions to remove the potential health hazards to the citizens of those States with tailings sites. This title would assign DOE the responsibility to administer the Mill Tailings Fund, but would not change the regulatory standards.

While the licensee of each civilian nuclear power reactor is required to certify the domestic uranium usage requirement, little additional paperwork would result from the enactment of S. 1004. However, additional administrative costs would be incurred by DOE for administering the Uranium Mill Tailings Fund under Title II. No personal information would be collected in administering the program, and there would be no impact on personal privacy from S. 1004.

X. Executive Communications

There were no legislative reports or communications received by the Energy and Natural Resources Committee from the Administration relating to S. 1004.

Following is the testimony submitted by the Administration at the April 10, 1986, Committee hearing.

STATEMENT OF
JAMES W. VAUGHAN, JR.
ACTING ASSISTANT SECRETARY FOR NUCLEAR ENERGY
U.S. DEPARTMENT OF ENERGY
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

APRIL 10, 1986

Mr. Chairman, I am pleased to be here today to present testimony on the Department of Energy's (DOE's) proposed revision to the Uranium Enrichment Services Criteria as well as to comment on the proposed amendment to S. 1004, the Uranium Mill Tailings Reclamation Act of 1985, presently before this Subcommittee for consideration.

URANIUM ENRICHMENT SERVICES CRITERIA

As you know, Section 161v of the Atomic Energy Act requires:

1. that DOE establish Criteria setting forth the terms and conditions under which enrichment services shall be available;

2. that prices charged by DOE be nondiscriminatory and be based on the Government's costs in providing services;

3. that DOE shall restrict the enrichment of uranium from foreign countries for domestic use "to the extent necessary to assure (the) maintenance of a viable domestic uranium industry;" and

4. that DOE submit revisions to the Criteria to the appropriate Congressional Committees for a 45-day period before they become effective.

In most respects, DOE's Uranium Enrichment Services Criteria have remained fundamentally unchanged since originally established in 1966. However, the current Criteria were not promulgated in the context of the marketplace as

Recovery of Government's Costs

The proposed Criteria would also establish a mechanism for the recovery of outstanding Government investment in the uranium enrichment enterprise. Under this mechanism, DOE would return to the U.S. Treasury, over a reasonable period of time, previously unrecovered costs associated with the provision of enrichment services to civilian customers. As stated in the proposed Criteria, the outstanding Government investment will be reduced from $7.5 billion to approximately $3.5 billion. The difference in these amounts reflects the write-off of the unproductive assets of the enterprise, as explained in the supplementary information published with the proposed Criteria. Interest at 6.3 percent per annum would be added to the unrecovered Government costs and payments to the Treasury would be made annually. The practice of demonstrating recovery of the Government's costs in DOE's annual financial statements would continue.

Restrictions on Foreign Origin Uranium

The proposed Criteria continue the Administration's policy of not imposing restrictions on the enrichment of foreign origin feed material destined for domestic use. DOE's preliminary view is that restrictions would not assist the domestic mining and milling industry in any meaningful way. The difficulties currently facing the domestic mining and milling industry appear to stem from various factors, including the disparity between the quality of ore deposits and the production cost of domestic and foreign uranium, excess uranium inventories, excess production capacity, and

it exists today. Consequently, the Criteria need to be updated to enhance DOE's ability to conduct business efficiently and to be competitive.

On January 29, 1986, DOE published a notice of proposed rulemaking in the Federal Register. The proposed changes to the Uranium Enrichment Services Criteria were drafted to address several key issues including contracting, pricing, and DOE's policy of enriching foreign origin uranium. Under the proposed Criteria, DOE could negotiate individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of the United States in the world market, while recovering the Government's costs for providing enrichment services. The proposed Criteria would provide flexibility concerning price as well as regarding other terms and conditions in enrichment services contracts. They would continue the existing policy against restrictions on the enrichment of uranium from foreign countries for domestic use as well as the existing prohibition against discriminatory pricing. The proposed Criteria also state that their adoption would not invalidate any prior contract.

Pricing

The proposed Criteria would allow DOE to negotiate prices as well as other terms and conditions with individual customers. They would offer all customers the opportunity to strike a bargain equal in attractiveness to other similarly-situated customers.

cancellation of unneeded powerplants due to shrinkage in the demand for electricity.

Rather than help, import restrictions could have undesirable effects on both the U.S. uranium industry and the DOE enrichment business. A sweeping limitation would likely cause many of DOE's customers to reconsider their enrichment contracts with DOE due to the higher costs of purchasing natural uranium of U.S. origin. If DOE customers were to terminate their contracts in favor of overseas enrichers, they might obtain all of their natural uranium from foreign producers who offer attractively-priced package deals. Thus, the loss of enrichment sales to domestic utilities by DOE could further damage the U.S. uranium mining and milling industry.

Interested parties were invited to comment on the proposed Criteria as part of the rulemaking process, and approximately 60 different sets of written comments were received. (DOE also held a public hearing on the proposed Criteria on March 18, 1986.) Based on the comments we have received to date, DOE will soon publish an additional analysis regarding the recovery of prior Government costs in the Federal Register and request further public comments based on this supplemental information. Subsequent to the review and consideration of all comments received, DOE will submit the revised Criteria to Congress at least 45 days prior to their actual effective date pursuant to the Atomic Energy Act of 1954, as amended.

These criteria changes are but one of a series of actions which DOE has taken to restructure its Uranium Enrichment program in the last 2 years. As a result, the enterprise is becoming more price competitive and our

market share is increasing. Price reductions are made possible by efforts to operate the existing gaseous diffusion plants in the most economical way possible. To ensure long-term competitiveness, DOE is also working to assure the timely deployment of the Atomic Vapor Laser Isotope Separation process. However, there is more to be done. Efforts are underway to develop the institutional framework that will assure that the Nation continues to have a reliable supply of enrichment services for the long term. We will continue to vigorously pursue a range of options that will stabilize and improve the competitiveness of the enterprise, including increased involvement of the private sector to ensure that the optimum benefits of the strategy on which we embarked several years ago are achieved.

The Department published a notice in the April 7, 1986, Federal Register that it was seeking expressions of interest from the private sector concerning potential participation in the Uranium Enrichment enterprise. This request for expressions of private sector interest is exploratory in nature. While our action is part of a broad Administration initiative to evaluate the transfer of certain Federal functions to the private sector, no decisions have been made by DOE regarding the sale of any uranium enrichment assets.

We believe that these actions are responsive to the realities of today's marketplace and will enable DOE to fulfill more effectively its statutory mandate under the Atomic Energy Act of 1954, as amended, to encourage the development and utilization of atomic energy for peaceful purposes. They are consistent with and supportive of the Department's view that

(1) civilian nuclear energy has a key role to play in assuring the Nation's energy security and strength and (2) continued prominence in providing enrichment services will further U.S. economic, national security, and nonproliferation goals. They reinforce continuing efforts to conduct the Department's enrichment activities in a more businesslike, competitive manner and will allow the United States to better utilize its strength and assets in the context of the highly competitive marketplace that exists today.

LEGISLATION TO REVITALIZE THE U.S. URANIUM MINING INDUSTRY

The proposed amendment is considerably broader than the provisions contained in S. 1004, which was limited to financing and managing remedial actions at active uranium and thorium processing sites. I presented the Department's views on S. 1004 last July in a joint hearing before this Subcommittee and the House Interior and Insular Affairs Subcommittee on Energy and the Environment. The proposed amendment now under consideration by the Subcommittee would (1) establish uranium import restrictions and domestic uranium usage requirements; (2) provide a funding mechanism for the reclamation of active uranium and thorium processing sites; (3) legislatively resolve legal challenges to the validity of the Department's Utility Services contracts; and (4) restructure the Department's uranium enrichment enterprise through the creation of a successor Enrichment Services Corporation.

Uranium Import Restrictions and Usage Requirements

The proposal now under consideration by the Subcommittee specifies actions to be taken to restrict uranium imports, including negotiations to achieve voluntary restraint by foreign producers, in an effort to reestablish a viable domestic uranium industry. If enacted, this legislation would (1) establish requirements for the use of U.S. mined and milled uranium in new fuel assemblies; (2) establish penalties for violation of U.S. uranium usage requirements; and (3) prohibit the purchase of foreign uranium by agencies of the Federal Government.

This Administration is generally opposed to the use of restrictions as a element of U.S. foreign trade policy. DOE does not support restricting the importation of natural foreign uranium, based in part on the lack of evidence that such restrictions would assist the mining and milling industry in a meaningful way.

Reclamation of Active Uranium and Thorium Processing Sites

Concerns over the uncontrolled disposition of uranium mill tailings, with the potential for public health and safety impacts, led to the passage of Public Law 95-604, "The Uranium Mill Tailings Radiation Control Act of 1978." Title I of that Act directed the Department to carry out appropriate remedial actions for certain inactive, largely abandoned uranium processing sites. Title II assigned responsibility for the decommissioning and stabilization of the licensed sites to the site owners under license with either the Nuclear Regulatory Commission (NRC) or the

applicable agreement State. The legislation also authorized the Environmental Protection Agency to establish standards for the cleanup of the processing sites and the final disposal of the mill tailings.

In my testimony on this subject last July, I reviewed the status of the Department's Title I program under Public Law 95-604 and the lessons learned from our experience in carrying out that program. While I will not repeat that summary, which remains essentially unchanged, the Department recognizes that the costs associated with tailings reclamation at the processing sites covered by Title II of Public Law 95-604 remains an issue for many in the uranium industry. However, we still question the premise of legislation which would require U. S. nuclear utilities and the Federal Government to pay costs associated with the reclamation of currently licensed, commercial facilities.

In addition, our experience in carrying out reclamation at the inactive Title I sites strongly indicates that minimum Government involvement in managing the cleanup of Title II sites would simplify execution of the various projects and reduce costs. The proposed amendment would assign to DOE, in consultation with the NRC, the responsibility for the identification of contaminated properties in the vicinity of the processing sites. In addition, the proposed amendment requires that DOE issue regulations and make a determination regarding reclamation activities performed by owners prior to the effective date of the Act. Since the responsibility for selecting and performing remedial action at the processing sites is strictly between the owner and the NRC, DOE's

involvement is likely to be cumbersome and inefficient. These functions can be more effectively and efficiently carried out by the NRC.

DOE believes that the establishment of a Uranium Mill Tailings Fund (Fund) to finance remedial actions at active uranium and thorium processing sites may prove costly to administer. We note that the Subcommittee proposal fails to provide for administrative costs. Moreover, present language describing the reimbursement of costs and refund of contributions from the Fund to owners is likely to produce problems in interpretation. For example, the $5.00 per dry ton limit can be interpreted either as a maximum amount for reimbursement or refund to owners from the Fund, or as a maximum remedial action cost against which to apply the two-thirds of cost reimbursement formula. Depending on the interpretation of the $5.00 per ton limit, it is possible that the Fund could be insufficient to meet required reimbursements.

The Subcommittee is also considering a provision that would refund excess contributions to the Fund beginning in January 1996, and annually thereafter. The specified formula requires pro-rata refunds to participating States until such States have been refunded the full amount of their contribution to the Fund; then, an additional refund is made to the States before any remaining excess is distributed to the Federal Government or to contributing nuclear power reactor licensees. The Department believes that refunds should be distributed uniformly to Federal, State, and reactor licensee contributors, pro-rated according to the amount of their respective contributions.

Finally, the Federal Government should not bear the total burden for the reclamation of active thorium processing site tailings arising from co-production of thorium for the U. S. and other products for commercial market.

Utility Services Contracts

Title III of the Subcommittee proposal would resolve any legal challenge to the validity of DOE's Utility Services (US) contracts. It is consistent with and supportive of the proposed revisions to DOE's Uranium Enrichment Services Criteria, discussed earlier, which would also remove any question as to the continued validity of the individually negotiated US contracts.

The provision extending the free variable tails assay option (VTAO) to all customers represents a change from our current practice where free VTAO is available only to those customers who elect to obtain 100 percent of their requirements from DOE.

Restructuring the Uranium Enrichment Enterprise

Title IV would require that DOE develop a plan to reorganize the Department's uranium enrichment program through the establishment of a successor Enrichment Services Corporation.

As part of its institutional reform initiative, DOE plans to examine various organizational alternatives that range from its current mode of operation to full privatization of the enrichment enterprise. The scope of this assessment would include, but not be limited to, consideration of

organizational structures analogous to that proposed by the Subcommittee in its present proposal. As a result, we recommend that any specific approach to restructuring the Uranium Enrichment enterprise be flexible enough to incorporate the results of our study which will be completed in the next 6 months.

Mr. Chairman, this completes my statement. I would be pleased to respond to your questions at this time.

XI. ADDITIONAL VIEWS OF MR. METZENBAUM

The Committee has adopted a number of amendments proposed to the section of the bill dealing with the reclamation of mill tailings waste sites. I believe that these amendments go along in ensuring a more equitable distribution of responsibility for site clean up and preservation of sound environmental guidelines.

Under these amendments, the Federal contribution has been lowered from $350 million to $300 million, companies will now be responsible for all reclamation costs above $4.50 per ton, rather than $5 per ton, and Federal funds will only be used for cost-sharing at sites which contain wastes generated by Federal contracts.

This significantly changes the cost-sharing aspect of the mill tailings fund, and merits further explanation.

While there is only one fund established to provide compensation to owners or licensees who complete reclamation, the new approach to cost-sharing requires that DOE keep track of the separate contributions of the Federal Government, the States and the utilities.

As the compensation formulae in the bill direct, Federal cost-sharing will only take place at sites which contain waste generated through Federal sales contracts. Utility contributions will be used for repayment of reclamation at these sites, but only after the required Federal, State and owner or licensee shares have been drawn.

The Federal contribution cannot be used to compensate for reclamation at sites where there is no waste generated from federal contracts.

For this reason, it will be necessary for the DOE to keep track of the contributions from the various parties to make sure that Federal contributions are not improperly employed.

Moreover, this restriction on Federal contributions creates that possibility that the total fixed contributions from the utilities and the States may not be large enough to ensure that when they are combined with the owner's or licensee's one-third share, all reclamation costs up to $4.50 per ton will be reimbursed at some sites.

In such a case, it is expected that the owner or licensee will have to bear the shortfall.

This is very clear from a reading of several provisions in the bill.

First, as already noted, Federal contributions to the fund can only be used to cover the Federal share of reclamation costs up to $4.50 per ton at sites containing wastes generated from Federal contracts.

Given this, it is anticipated that the entire $300 million Federal contribution will not be used, and that the Federal Government will eventually receive a substantial refund.

Secondly, the act clearly states that owners or licenses will be compensated for reclamation costs up to $4.50 per ton from contri-

butions to the mill tailings fund. This means that the sole source of reimbursement is the fund, and there are no requirements in the bill that the Federal Government, the States or the utilities are, or will be, required to contribute more to the fund than what is specified in the bill. Therefore, it is expected that if there are not sufficient sums in the fund within the categories of contributions from which an owner or licensee is eligible to receive compensation under the terms of the amendment to the bill, then the owner or licensee may not be fully compensated for the cost of reclamation up to $4.50 per ton and will have to bear the cost of the shortfall.

These are the clear implications of the provisions that have been adopted by the committee, and I believe they have the effect of more equitably assessing responsibility for the reclamation of the mill tailings sites.

Additionally, as a result of the proposals that have been adopted by committee, all disbursements from the mill tailings clean up fund will now be subject to appropriations. Additionally, the bill now clearly states that companies are still expected to fulfill all of the reclamation and long term care responsibilities established in the 1978 mill tailings act, and the NRC and EPA regulations established under the act.

These changes reflect my concern that the mining companies bear a greater share of the clean up costs, that this fund be subjected to the normal appropriations process, and that the requirement for thorough, long lasting reclamation be maintained.

As evidenced by the fact that the Federal contribution was lowered by $50 million, these changes will result in substantial savings for the Government over the original proposal. Total savings will be in the range of $50 million to $100 million.

I believe these changes improve the bill.

HOWARD M. METZENBAUM.

XII. MINORITY VIEWS OF MR. EVANS

S. 1004 as passed by the Committee is a package of several elements designed to attract the support of the various interest groups directly or indirectly affected by the uranium mining and milling industry. It is a creative piece of legislation. Indeed, on the environmental side, there are two active mill tailing sites in the northeastern part of my state of Washington, included in the bill, that would benefit from the prescriptive cleanup schedule in Title II. The bill includes other constructive elements that are intended to break some of the legal and administrative logjams facing the industry.

The domestic uranium mining and milling industry unquestionably has gone through some wrenching times over the past several years. Production and employment have fallen dramatically, while imports of cheaper, high-grade ore have increased. Uranium production boomed in the 1970's, both in the United States and in foreign countries. But production has dropped rapidly since 1980 as utilities have cancelled or mothballed scores of nuclear powerplants in the United States, thus reducing the demand for uranium ore and feed material. Thus, the uranium industry has come to the Congress with a plea for the governmental help included in this legislation.

The crux of this bill is Title I that establishes a 50 percent level of import restrictions (termed "domestic usage requirements") on the importation of foreign-origin uranium. I oppose this provision, and, on this basis, voted against S. 1004 in Committee. I believe such import restrictions will unnecessarily raise the costs of electricity to thousands of American ratepayers and industries. I also question whether such restrictions will indeed have the beneficial impact over the long-term on the viability of the domestic mining industry, as the proponents of the legislation allege. The Department of Energy, in consultation with the U.S. Trade Representative, has already concluded that import restrictions will not have a beneficial impact on the industry's viability. I concur with that judgment. The clear and immediate impact on such restrictions is obvious: an increase in the domestic price of uranium from the current $15–$20 per pound to a probable level of $30–$35 per pound. Indeed, as is typical with most other industries demanding import protection, an increase in domestic prices appears to be the real motivation for Title I.

The causes of distress in our uranium mining and milling industry are evident: substantial overcapacity built in the boom period of 1970's, and the declining demand by nuclear utilities for uranium. As forward supply of uranium appeared to fall short in the mid-1970's, utilities contracted for an excessive supply of uranium that were embodied in long-term fixed commitment enrichment contracts. Foreign mines were developed rapidly, as well as new do-

mestic mines. Then the Three Mile Island accident unexpectedly occurred, causing a rapid decline in demand for nuclear-generated power. Many of the foreign mines, however, have reserves of uranium ore of high concentrations that can be produced more cheaply than that of domestic mines. American producers have been placed at a long-term, competitive disadvantage. The import restrictions included in Title I do not address these problems of long-term competitiveness.

Proponents of S. 1004 cite the recent decision in the U.S. District Court for the District of Colorado as an urgent need for passage of this legislation. This is a misleading argument. The Court's decision, currently on appeal to the Tenth Circuit Court of Appeals, requires DOE to accept only domestic-origin uranium for enrichment after January 1, 1987. The item subject to restrictions in the Court's decision and the usage requirements in S. 1004, however, are not equal. In fact, the Court's decision creates a potentially huge loophole for U.S. utilities to abrogate existing contracts in order to contract for uranium ore and enrichment overseas, since it specifies no prohibition on the importation of overseas enriched uranium. S. 1004 resolves that potential loophole by setting the restrictions on foreign-origin uranium at the reactor's fuel assembly, which would include both foreign-enriched uranium as well as unprocessed uranium.

Finally, I must note that several trade laws exist to address the problems facing the uranium mining industry, including countervailing duty and antidumping laws, Section 201 escape clause actions, and Section 301 foreign unfair trade practices. Furthermore, Section 232 investigations led by the Secretary of Commerce are available to those industries which claim to be closely related to our national security and injured by imports. None of these laws, however, have been utilized by this industry. I strongly believe these laws should be the means by which any relief is afforded to an injured domestic industry, not sector-specific action by Congress. Yet the domestic uranium mining industry appears to have consciously chosen to circumvent these laws and seek relief directly from the Congress. In my view, this is an inappropriate means by which to fashion our trade policy.

I offered an amendment in the Committee, but subsequently withdrew it without asking for a recorded vote. It required two actions by the Administration: consultations with major uranium producing countries to limit their exports to this market; and a Section 232 investigation by the Secretary of Commerce. While I am not necessarily wedded to this specific language, I expect to raise the trade-related issues in Title I if, and when, S. 1004 reaches the floor.

DANIEL J. EVANS.

XIII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1004, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman.

Atomic Energy Act of 1954

* * * * * * *

Sec. 161. "General Provisions.—In the performance of its functions the Commission is authorized to—

v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (ii) [any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time] *any prices established under this subsection shall be on the basis of, as the first priority, the acquisition and retention of the maximum attainable share of domestic and foreign sales of enrichment services; and, as a subordinate priority, the recovery of the Government's costs over a reasonable period of time: And provided further,* [That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States.]* The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction

* Note: This provision shall be suspended from September 8, 1986 until December 31, 2000.

of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

* * * * * * *

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure[—]*for the share of costs for which the licensee is responsible—*

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11e.(2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11e.(2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

* * * * * * *

[SEC. 170B. URANIUM SUPPLY.—

[a. The Secretary of energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

[b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

[c. The criteria referred to in subsection a. shall also include, but not be limited to—

[(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

[(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

[(3) present and probable future use of the domestic market by foreign imports;

[(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

[(5) present and projected domestic uranium exploration expenditures and plans;

[(6) present and projected employment and capital investment in the uranium industry;

[(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

[(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

[d. The Secretary or Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

[e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the

Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

[(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

[(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.]*

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*Note: Section 170B shall be suspended from September 8, 1986 until December 31, 2000.

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Calendar No. 967

99TH CONGRESS
2d Session

SENATE

REPORT
99-476

AUTHORIZING THE ACQUISITION OF LANDS FOR THE SUPPORT OF FORT SUMTER, SOUTH CAROLINA

SEPTEMBER 23 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

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Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2534]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2534), to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 23, delete "egress, and vehicular parking", and insert "and egress".

2. Add the following new section:

"SEC. 5. The Secretary of the Interior shall transfer administrative jurisdiction over the Federal property, consisting of approximately 1 acre, known as the Broad Street site, to the Secretary of the Department in which the Coast Guard is operating, who shall transfer to the Secretary of the Interior, subject to such reservations, terms, and conditions as may be necessary for Coast Guard purposes, administrative jurisdiction over the Federal property, consisting of approximately 1 acre located near Fort Moultrie on Sullivan's Island for purposes of maintenance workshop, storage, and seasonal housing in connection with the administration and protection of the Fort Sumter National Monument.".

71-010 O

S313-55

PURPOSE OF THE MEASURE

S. 2534, as reported, would authorize the Secretary of the Interior to acquire not to exceed 8.91 acres to provide facilities for visitors to Fort Sumter National Monument.

BACKGROUND AND NEED

In 1948, Fort Sumter was designated a Civil War memorial and became a part of the National Park System. Since 1948, visitors have been ferried in boats from the peninsula of Charleston to the fortress island.

For the past decade, the National Park Service has attempted to locate a docking facility in Charleston for a concessioner-operated tour boat which transports more than 150,000 people to Fort Sumter each year. The present tour boat facility at the Charleston City Marina on the Ashley River does not offer adequate parking and provides no rest rooms or services. The Park Service has studied several potential boat docking sites in the past 10 years. In 1978, Congress appropriated $5,581,000 for construction of a tour boat facility adjacent to Charleston's Broad Street. However, the City of Charleston persuaded the Park Service that the Fleet Landing site would be more appropriate—based on a Charleston tourism study. In 1980, Congress authorized the acquisition of the Fleet Landing site and $368,000 was appropriated in 1982, for this purpose. However, concerns over parking, vehicle access, and the need for dredging at that site caused the Park Service to halt land acquisition negotiations in 1982.

In May 1985, the tour boat concessioner requested National Park Service consideration of a 9-acre site immediately north of Dockside Condominiums, known as "Dockside II". In June, the City of Charleston requested the Park Service to consider this site as a location for tour boats as well as a marine science museum. In January 1986, the concessioner purchased the site consisting of approximately 9 acres of high and submerged lands.

S. 2534 authorizes the Secretary of the Interior to acquire up to 8.91 acres at the Dockside II site to provide tourboat facilities for visitors to Fort Sumter National Monument. The bill also authorizes the Secretary to convey a leasehold interest in not to exceed 1½ acres to the State of South Carolina or the City of Charleston for development of a marine museum and associated facilities. The legislation also provides authority for the sale of the property to be used for the marine museum to the State or City.

The bill authorizes the Secretary to grant convenants or easements for ingress and egress. Further, it provides that the Secretary may enter into cooperative agreements for the sharing of construction, maintenance, and use of buildings and facilities among the parties to the agreements.

S. 2534 repeals section 117 of Public Law 96-199 which authorized acquisition of the Fleet Landing site, and makes funds previously appropriated available for the Dockside II project.

The Park Service estimates that the cost of developing the tourboat facility at Dockside II would be approximately $3.3 million. An appraisal of the property has not yet been completed, however, the Park Service has indicated that the unexpended funds previ-

ously appropriated ($5.468 million) are sufficient to acquire the property and to develop the site.

LEGISLATIVE HISTORY

S. 2351 was introduced by Senator Thurmond and Senator Hollings on June 10, 1986. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on the bill on July 18, 1986.

At a business meeting on September 17, 1986, the Senate Committee on Energy and Natural Resources ordered S. 2534, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 17, 1986, by unanimous voice vote of a quorum present recommends that the Senate pass S. 2534, if amended, as described herein.

COMMITTEE AMENDMENTS

The first amendment deletes authority to grant interests in land owned by the United States for vehicular parking. The Committee believes a more appropriate way to share the use of parking facilities is under a cooperative agreement pursuant to section 2(a)(3) of the bill.

The second amendment authorizes that transfer of jurisdiction over two properties: One from the National Park Service to the Coast Guard—the Broad Street site, which is no longer needed for tourboat purposes by the National Park Service; and the other from the Coast Guard to the National Park Service—a 1-acre site which for the past ten years has been occupied by the National Park Service under permit from the Coast Guard, for purposes of providing administrative facilities needed on Sullivan's Island. Both transfers of jurisdiction are recommended by field offices of the National Park Service and the Coast Guard. The amendment would not result in the need for additional appropriations.

The Committee recognizes that safe and efficient water transportation of visitors to Fort Sumter is the paramount concern of the National Park Service (NPS). Proposed docking facilities of the other parties should be designed so as not to interfere with this purpose. The Committee feels that unencumbered dock and turning space over water is absolutely essential to the National Park Service presence on this site and if this cannot be assured, no other water uses except those by the NPS should be allowed.

The Committee expects that public access to the waterfront of the entire property for strolling or sitting should be preserved.

The Committee believes that the National Park Service mission is paramount at the site. The site will provide the NPS with a permanent presence on the waterfront and serve as the key mainland embarkation site for the visitor to Fort Sumter. NPS activities should not be obstructed by other uses. Due to the primary mission of the NPS at the site, the Committee feels that there should be no

commercial uses on the surface of the water during hours of NPS operation without prior approval from the Service.

The Committee directs the National Park Service to negotiate a leasehold or deed that includes restrictions that would preserve the compatibility of development and use with the mission of the Service.

The Committee feels that the city of Charleston should be responsible for utilities and maintenance, including repaving and landscaping of the parking lot and the overflow parking site, if the Marine Science Museum is constructed on the site.

The Committee is aware that the Secretary may acquire less than 8.91 acres of land and interests from the present owner of the lands described in section 1 of the Act. If the Secretary does not acquire all of the lands, the Committee expects that the Restrictive Covenants and other terms and conditions as listed in the Letter of Agreement dated August 11, 1986 (and as shown in Appendix A) to Mr. George E. Campsen from the National Park Service and signed by Robert Baker, and agreed to by Mr. Campsen, be applied to the lands in section 1 of the Act not acquired by the Secretary.

APPENDIX A

United States Department of the Interior

NATIONAL PARK SERVICE
SOUTHEAST REGIONAL OFFICE
75 Spring Street, S.W.
Atlanta, Georgia 30303

IN REPLY REFER TO:

L1425(SER-OL)

AUG 11 1986

Mr. George E. Campsen
Fort Sumter Tours, Inc.
Charleston City Marina
17 Lockwood Boulevard
Charleston, South Carolina 29401

Dear Mr. Campsen:

For purposes of satisfying subcommittee requests with reference to the proposed acquisition of your property in Charleston, South Carolina, the paragraphs which follow summarize the intentions and agreements of the National Park Service and yourself as understood by the National Park Service. Included in these paragraphs is a recitation of Restrictive Covenants which will apply to the property retained by you adjacent to the property which will be acquired by the National Park Service. Assuming you concur with the recitation in this letter, I request that you execute the "I agree" section at the end of this letter and return it to me so it may be forwarded to the Congress.

For a substantial period of time the National Park Service has been negotiating with you about the acquisition of suitable real property in Charleston, South Carolina for the establishment and operation of a tour boat facility to service visitors to Fort Sumter National Monument. The proposed acquisition, of course, has been dependent upon receiving Congressional authorization and this has been accepted by both parties as a given variable in our negotiations. During these negotiations and now, you have held yourself out as willing to convey a sufficient portion of your property to the United States to enable establishment of the tour boat facility. In furtherance of our attempt to acquire the subject property, the National Park Service has proposed legislation to Congress to authorize the acquisition of the property. After review of this proposal, as you know, the National Park Service has been requested by the Senate Subcommittee on Public Lands to set forth generally the terms and conditions of the Restrictive Covenants which will apply to the property retained by you which will be adjacent to the property acquired by the National Park Service. Because additional architectural and engineering input from both parties is believed desirable,

we are unable to specifically establish the property which will be retained by you and sold to the United States. Nevertheless, you and the Service are in agreement that certain Restrictive Covenants will be applicable to the property retained by you and upon the property conveyed to the United States should this conveyance be consummated. Assuming that the property retained by you (Grantor) may be designated as Tract A and the property to be conveyed to the United States (Grantee) may be designated as Tract B, these Restrictive Covenants can be listed as follows:

EASEMENT FOR INGRESS, EGRESS AND TURN AROUND

An access easement shall be retained by Tract A, which will permit ingress and egress from the public streets through Tract B to Tract A, with adequate circular "turn around" at or near the water's edge. Said easement to have such size, shape, dimensions, buttings and boundings as shall be hereafter agreed by the parties.

PERMISSIVE USE SUBJECT TO CERTAIN RESTRICTIONS

The use of Tract A shall be limited to a food service establishment, lounge, gift shop, one non-commercial dwelling unit and administrative offices for such on-premise operations. In order to insure compatibility of appearances of all structures, Grantor agrees not to finalize design nor commence construction of any improvements on Tract A, until the design of the tour boat facility has been established. Grantor agrees that the architectural design of the facade or outward appearance of all structures to be erected and surrounding grounds on Tracts A, shall be subject to approval by Grantee. However, approval shall not be unreasonably withheld.

All improvements upon Tract A shall be kept clean, free of litter and properly maintained, repaired, painted, etc. in compliance with National Park Service standards. Provided further, that owner of Tract A, after written notice, shall have one hundred twenty (120) days to remedy any deficiency in such standards, or Grantee shall have the right to itself remedy such defects at the expense of the owner of Tract A.

PROHIBITED USES

Tract A shall not be used for any purpose or business which is considered dangerous or unsafe, or which constitutes a nuisance, or is noxious or offensive by reason of emission of dust, odor, gas, smoke, or fumes, nor shall any pornographic activities be conducted thereon.

No commercial water activities shall be operated from Tract A during periods of regularly scheduled tours of Fort Sumter unless authorized by the Grantee. This would include, but not be limited to, tourboats, water taxis, water shuttles, harbor cruises and excursions. The retained right of limited

commercial use shall terminate, however, upon sale of the property by the Grantor and further, is applicable only to vessels owned and operated by the present NPS Concessioner.

Plans and specifications for construction, installation, placement or alteration of all outdoor signs to be erected on Tract A, shall be subject to approval by Grantee, which approval shall not be unreasonably withheld. The parking area appurtenant to Tract A shall only be used for parking purposes. All structures, temporary or permanent, in the parking area of Tract A, shall be subject to approval by Grantee.

Tract A shall not be used for any purpose which is not lawful and in accordance with local law.

FIRST RIGHT OF REFUSAL

In the event Grantor elects to offer Tract A for sale, Grantee shall have a right of first refusal to meet the terms and conditions of any bona fide offer, to acquire said tract, which right shall remain valid for a period of ninety (90) days after Grantee receives notice of terms and conditions of anticipated sale by Grantor.

PARTIAL INVALIDITY

The invalidity of any Restriction set forth herein, or the failure to enforce same, at the time of violation, shall in no event affect any of the other Restrictions nor be deemed a waiver of the right to enforce the same hereafter.

TERM

The above Covenants shall run with and bind the land, and shall enure to the benefit of and be enforceable by the parties, their heirs, successors and assigns in perpetuity.

VALIDITY

The terms and conditions of this agreement are only valid if the Grantee is authorized to acquire and develop the property by the Congress of the United States and is subject to any restrictions or changes imposed by Congress in its authorizing legislation.

Further, the parties agree that the Restrictions generally set forth herein may be subject to minor modifications as agreed upon by the parties.

Thank you for your continued cooperation in this matter.

Sincerely,

Regional Director
Southeast Region

I have read the foregoing letter and agree that it correctly recites the intentions and agreements between myself and the National Park Service.

8-14-86
Date

George E. Campsen, Jr.
George E. Campsen

COST AND REGULATORY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2534, a bill to authorize the acquisition and development of a mainland tour boat facility for the Forth Sumter National Monument, South Carolina, and for other purposes, as ordered reported by the Senate Committee on Energy and Nature Resources, September 17, 1986. Enactment of S. 2534 would not result in any additional cost to the federal government or to state or local governments.

S. 2534 would authorize the Secretary of the Interior to acquire a site of approximately nine acres to be administered as part of Fort Sumter National Monument. Because the acquisition and development of the site (which would be used for a tour boat facility) would be accomplished with funds previously appropriated for this purpose at another site, the bill would have no incremental budgetary impact. The cost of acquiring and developing the facility is estimated to be approximately $5 million.

The bill would also authorize the Secretary of the Interior to convey a leasehold interest (with option to purchase) in about 1.5 acres to the city of Charleston or the State of South Carolina for a museum or other facility. Any leasehold interest would be conveyed without compensation, but outright sale of the land would be at the department's cost of acquisition, plus interest. Present plans call for the site to be leased to the city or state; therefore, no compensation is expected.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2534. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2534, as reported.

EXECUTIVE COMMUNICATIONS

On June 19, 1986, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2534. These reports had not been received at the time the report on S. 2534 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 2534, as reported.

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